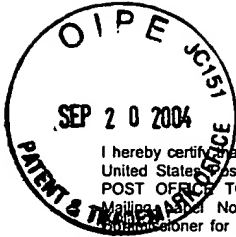


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Juanita Aguilar
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PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: POVOLNY et al.

Serial No.: 09/637,138

Filed: August 11, 2000

Title: INTERACTIVE PATIENT-PROVIDER
DATA SYSTEM AND METHOD

Art Unit: 3626

Examiner: Alexander G. Kalinowski

RESPONSE TO REQUIREMENT FOR INFORMATION

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
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Sir:

In the Office Action dated July 19, 2004, the Examiner set forth a requirement for information under 37 C.F.R. § 1.105. In particular, the Examiner requested "any known information regarding the beta testing of the Ortho Sesame product including when the testing occurred and under what conditions/circumstances did the beta test occur under." (Office Action, ¶ 2.) Applicants respond to this requirement as follows:

As set forth in the enclosed Declaration of Frith Maier, beta testing of the Ortho Sesame product did not begin until October 1999, and was performed under non-public conditions. (Maier Declaration, ¶¶ 3-4.) The time at which beta testing began, and that it was performed under conditions of strict confidentiality and non-disclosure, are evidenced by written Beta Test Agreements with each of the respective beta testers. (Id. at ¶¶ 3-11, Ex. A-E.) Note that the business entity "Patient Interactive" that contracted with the beta testers was at all times owned and controlled by the inventors. (Id. at ¶ 5.) Accordingly, the beta testing of the Ortho Sesame product poses no bar to patentability of the invention under 35 U.S.C. § 102(b) or any other provision of law.

As an ancillary matter, although none of the five doctors who received the Ortho Sesame product for beta testing disclosed or publicly used the Ortho Sesame product, whether or not any did so is not material to patentability of the invention. The pertinent fact is that the Ortho Sesame product was not supplied to the five doctors for beta testing until well *after* August 11, 1999. (Id. at ¶¶ 3, 12.) Therefore, even if any of the five doctors had published or made public use of the invention, such actions could not have occurred more than one year prior to the filing date (August 11, 2000).

In summary, as confirmed by the enclosed Declaration of Frith Maier, the invention was not patented or described in a written publication in this or a foreign country or in public use or on sale in the United States more than one year before the filing date of the present application. (Id. at ¶ 12.) Applicants' activities prior to filing of the application therefore pose no bar to patentability of the invention under any provision of 35 U.S.C. § 102.

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Page 3

While the Applicants believe that no fees are due in connection with the filing of this paper, the Commissioner is authorized to charge any shortage in the fees, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,



Date: September 20, 2004

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Enclosures: Declaration of Frith Maier